

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | File No. EB-05-TC-078, EB-07-TC-1270 |
| |) | |
| MHJP, Inc. f/k/a BCJR, Inc. |) | NAL/Acct. No. 200732170071 |
| |) | FRN: 0016773517 |
| |) | |

FORFEITURE ORDER

Adopted: December 19, 2008

Released: December 22, 2008

By the Commission:

I. INTRODUCTION

1. In this *Forfeiture Order* (“Order”), we issue a monetary forfeiture in the amount of \$114,500 against MHJP, Inc. f/k/a BCJR, Inc. (“MHJP”) for willful or repeated violations of section 227 of the Communications Act of 1934, as amended, (“Act”) and the Commission’s related rules and orders,¹ by delivering at least twenty-three unsolicited advertisements to the telephone facsimile machines of at least nineteen consumers.

II. BACKGROUND

2. The facts and circumstances surrounding this case are set forth in the Commission’s Notice of Apparent Liability for Forfeiture² and need not be reiterated at length.

3. Section 227(b)(1)(C) of the Act makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement.”³ The term “unsolicited advertisement” is defined in the Act and the Commission’s rules as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or

¹ See 47 U.S.C. § 503(b)(1). The Commission has the authority under this section of the Act to assess a forfeiture against any person who has “willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act”; see also 47 U.S.C. § 503(b)(5) (stating that the Commission has the authority under this section of the Act to assess a forfeiture penalty against any person who does not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities so long as such person (A) is first issued a citation of the violation charged; (B) is given a reasonable opportunity for a personal interview with an official of the Commission, at the field office of the Commission nearest to the person’s place of residence; and (C) subsequently engages in conduct of the type described in the citation).

² *MHJP, Inc. f/k/a BCJR, Inc.*, Notice of Apparent Liability for Forfeiture, FCC-07-135 (August 1, 2007); and *MHJP, Inc. f/k/a BCJR, Inc.*, Notice of Apparent Liability for Forfeiture, FCC-08-157 (June 20, 2008).

³ 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3).

permission in writing or otherwise.”⁴ Under the Commission’s rules, an “established business relationship”⁵ exception permits a party to deliver a message to a consumer if the sender has an established business relationship with the recipient *and* the sender obtained the number of the facsimile machine through the voluntary communication by the recipient, directly to the sender, within the context of the established business relationship, or through a directory, advertisement, or a site on the Internet to which the recipient voluntarily agreed to make available its facsimile number for public distribution.⁶

4. On December 22, 2005, in response to one or more consumer complaints alleging that BCJR, MHJP’s predecessor had faxed unsolicited advertisements, the Enforcement Bureau (“Bureau”) issued a citation⁷ to BCJR, pursuant to section 503(b)(5) of the Act.⁸ The Bureau cited the company⁹ for using a telephone facsimile machine, computer, or other device, to send unsolicited advertisements, in violation of section 227 of the Act and the Commission’s related rules and orders. The citation warned the company that subsequent violations could result in the imposition of monetary forfeitures of up to \$11,000 per violation, and included a copy of the consumer complaints that formed the basis of the citation.¹⁰ The citation informed the company that within 30 of the date of the citation, it could either request an interview with Commission staff, or could provide a written statement responding to the citation. The company did not request an interview or otherwise respond to the citation.

5. Following the issuance of the citation, the Commission received at least thirteen complaints from consumers alleging that MHJP faxed at least seventeen unsolicited advertisements to

⁴ See 47 U.S.C. § 227(a)(4); 47 C.F.R. § 64.1200(f)(13).

⁵ An “established business relationship” is defined as a prior or existing relationship formed by a voluntary two-way communication “with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” See 47 U.S.C. § 227(a)(2); *see also* 47 C.F.R. § 64.1200(f)(5).

⁶ See 47 U.S.C. § 227(b)(1)(C); 47 C.F.R. § 64.1200(a)(3)(i), (ii).

⁷ Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-05-TC-078 issued to BCJR, Inc. on December 22, 2005. The Commission staff subsequently issued a citation to the same entity under the name “MHJP.” See Citation from Kurt A. Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, File No. EB-07-TC-1270 issued to MHJP, Inc. f/k/a BCJR, Inc. on May 25, 2007.

⁸ See 47 U.S.C. § 503(b)(5) (authorizing the Commission to issue citations to persons who do not hold a license, permit, certificate or other authorization issued by the Commission or an applicant for any of those listed instrumentalities for violations of the Act or of the Commission’s rules and orders).

⁹ Bureau staff issued the December 22, 2005 citation to BCJR, Inc., because MHJP formerly operated under the corporate name BCJR, Inc. See n.2, *supra*. In a letter dated November 13, 2006 responding to a Commission request for information, TouchTone Communications provided previous billing information for MHJP indicating that BCJR was the predecessor to MHJP. Letter from Neil DeRiggi, Customer Service Manager, TouchTone Communications, to Federal Communications Commission, Enforcement Bureau, Telecommunications Consumers Division, dated November 13, 2006. The toll-free number at issue in this NAL, 1-800-215-3132, was listed as a number “associated” with the toll-free number that Commission staff had inquired about at that time. The letter indicated that Matt Hubbard was the contact person for both BCJR and MHJP. As of June 14, 2007, Matt Hubbard was still listed as the contact person for MJHP in TouchTone’s billing records. Letter from Neil DeRiggi, Customer Service Manager, TouchTone Communications, to Federal Communications Commission, dated June 14, 2007.

¹⁰ On December 22, 2005, Bureau staff mailed the citation to the following address: BCJR, Inc., 180 N. Westmont Drive, Altamonte Springs, FL 32714. On May 25, 2007, Bureau staff mailed the citation to the following addresses: MHJP, Inc. f/k/a BCJR, Inc., 3059 Autumn Court, Winter Park, FL 32792-1738; and P.O. Box 161759, Altamonte Springs, FL 32716. See notes 7, 8, *supra*.

them. These violations, which occurred after the Bureau's citation, resulted in the issuance of a Notice of Apparent Liability for Forfeiture ("NAL") against MHJP on August 1, 2007 in the amount of \$87,500.¹¹ Following the issuance of this *NAL*, the Commission continued to receive complaints from multiple consumers alleging that MHJP faxed unsolicited advertisements to them.¹² These complaints, received after the Commission's citation, resulted in the issuance of another Notice of Apparent Liability for Forfeiture against MHJP on June 20, 2008 in the amount of \$27,000.¹³ The *NALs* ordered MHJP to either pay the proposed forfeiture amount within thirty (30) days or submit evidence or arguments in response to the *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed. MHJP did not respond to the *NAL*¹⁴ or pay the proposed forfeiture amount.

III. DISCUSSION

6. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each violation of the Act, or of any rule, regulation, or order issued by the Commission under the Act, by a non-common carrier or other entity not specifically designated in section 503 of the Act. The maximum penalty for such a violation is \$11,000 for a violation occurring before September 2, 2008, and \$16,000 for a violation occurring on or after September 2, 2008.¹⁵ In exercising such authority, we are to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁶

7. Although the *Commission's Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the prohibition against using a telephone facsimile machine to send unsolicited advertisements, the Commission has previously considered \$4,500 per unsolicited fax advertisement to be an appropriate base amount.¹⁷ We apply that base amount to each of twenty-one

¹¹ *MHJP, Inc. f/k/a BCJR, Inc.*, Notice of Apparent Liability for Forfeiture, FCC-07-135 (August 1, 2007).

¹² See n.2 *supra*; see also 47 U.S.C. § 503(b)(1).

¹³ *MHJP, Inc. f/k/a BCJR, Inc.*, Notice of Apparent Liability for Forfeiture, FCC-08-157 (June 20, 2008).

¹⁴ In response to the first *NAL*, MHJP provided us with information indicating that the company has ceased operations. However, MHJP did not submit a response with any substantive information relating to the *NAL*. See Letter from MHJP, Inc. dated August 17, 2007 (stating MHJP, Inc. has dissolved as of August 17, 2007, including copies of the Notice of Corporate Dissolution and Articles of Dissolution, submitted to Department of Corporations for the State of Florida).

¹⁵ Section 503(b)(2)(C) provides for forfeitures of up to \$10,000 for each violation in cases not covered by subparagraph (A) or (B), which address forfeitures for violations by licensees and common carriers, among others. See 47 U.S.C. § 503(b). In accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, Pub. L. 104-134, Sec. 31001, 110 Stat. 1321, the Commission implemented an increase of the maximum statutory forfeiture under section 503(b)(2)(C) first to \$11,000 and more recently to \$16,000. See 47 C.F.R. § 1.80(b)(3); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (forfeiture maximum for this type of violator set at \$11,000); *Amendment of Section 1.80(b) of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (amendment of section 1.80(b) to reflect inflation left the forfeiture maximum for this type of violator at \$11,000); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, 23 FCC Rcd 9845 (2008) (amendment of section 1.80(b) to reflect inflation increased the forfeiture maximum for this type of violator to \$16,000).

¹⁶ See 47 U.S.C. § 503(b)(2)(D); see also *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17100-01 para. 27 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁷ See *Get-Aways, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 1805 (1999); *Get-Aways, Inc.*, Forfeiture Order, 15 FCC Rcd 4843 (2000); see also *US Notary, Inc.*, Notice of Apparent Liability for Forfeiture, 15

apparent violations. In addition, where the consumer requests the company to stop sending facsimile messages, and the company continues to send them, the Commission has previously considered \$10,000 per unsolicited fax advertisement the appropriate forfeiture for such egregious violations.¹⁸ Here, two consumers specifically requested that MHJP cease sending facsimiles. Notwithstanding these requests, an additional two facsimiles were sent to these consumers. Thus, we apply the \$10,000 amount to each of two of the apparent violations. We apply that base amount to each of two of the apparent violations.

8. MHJP did not respond to the NAL or pay the proposed forfeiture amount.¹⁹ MHJP has failed to identify facts or circumstances to persuade us that there is a basis for modifying the proposed forfeiture, and we are not aware of any further mitigating circumstances sufficient to warrant a reduction of the forfeiture penalty. For these reasons, and based on the information before us, we hereby impose a total forfeiture of \$114,500 for MHJP's willful or repeated violation of section 227 of the Act and the Commission's related rules and orders, as set forth in the NAL.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), that MHJP, Inc. f/k/a BCJR, Inc. IS LIABLE FOR A MONETARY FORFEITURE to the United States Government the sum of \$114,500 for willfully and repeatedly violating section 227(b)(1)(c) of the Communications Act, 47 U.S.C. § 227(b)(1)(c), section 64.1200(a)(3) of the Commission's rules, 47 C.F.R. § 64.1200(a)(3), and the related orders as described in the paragraphs above.

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.²⁰ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter

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Rcd 16999 (2000); *US Notary, Inc.*, Forfeiture Order, 16 FCC Rcd 18398 (2001); *Tri-Star Marketing, Inc.*, Notice of Apparent Liability For Forfeiture, 15 FCC Rcd 11295 (2000); *Tri-Star Marketing, Inc.*, Forfeiture Order, 15 FCC Rcd 23198 (2000).

¹⁸ See *Carolina Liquidators, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC 16,837, 16,842 (2000); *21st Century Fax(es) Ltd., AKA 20th Century Fax(es)*, 15 FCC Rcd 24,406, 24,411 (2000).

¹⁹ In response to the first NAL against MHJP, see n.2, *infra*, MHJP provided us with information indicating that the company has ceased operations. However, MHJP did not submit a response with any substantive information relating to the NAL. See Letter from MHJP, Inc. dated August 17, 2007 (stating MHJP, Inc. has dissolved as of August 17, 2007, including copies of the Notice of Corporate Dissolution and Articles of Dissolution, submitted to Department of Corporations for the State of Florida). According to publicly available information, Matt Hubbard, President, is listed as the contact person for MHJP. Accordingly, all references in this NAL to MHJP also encompass the foregoing individual and all other principals and officers of this entity, as well as the corporate entity itself.

²⁰ 47 U.S.C. § 504(a).

the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). MHJP will also send electronic notification on the date said payment is made to Johnny.drake@fcc.gov. Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures.

11. IT IS FURTHER ORDERED that a copy of the Forfeiture Order shall be sent by First Class mail and certified mail return receipt requested to MHJP, Inc. f/k/a BCJR, Inc., Attention: Matt Hubbard, MHJP, Inc. f/k/a BCJR, Inc., 3059 Autumn Court, Winter Park, FL 32792-1738, 180 N. Westmonte Drive, Altamonte Springs, FL 32714-3342 and P.O. Box 161759, Altamonte Springs, FL 32716; and c/o MHJP, Inc. f/k/a BCJR, Inc., Traci Reagan, 513 Balsawood Court, Altamonte Springs, FL 32714.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary